



Date: September 8, 2011
To: State Representative John Walsh, Chair,
House Judiciary Committee
From: Marla Mitchell-Cichon and Donna McKneelen, Co-Directors
William Fleener, Staff Attorney
Re: Comments on MCL 770.16's Sunset Provision

MCL 770.16, in its current form, sunsets on January 1, 2012. This means that petitions under Michigan's post-conviction DNA testing law must be filed by the end of this year. SB 361 extends that sunset to 2016, and we ask for your support.

Since Michigan's post conviction DNA testing law's original effective date, January 1, 2001, there has not been a significant number of cases litigated under the statute. The Innocence Project, which pursues the majority of claims under the statute, has filed under 20 petitions since 2001. Any concern for finality is outweighed by a viable claim of innocence. In addition, it only serves the public interest to exonerate the innocent, and, in turn, identify the true perpetrator.

On January 1, 2009, MCL 770.16 was modified to allow requests for DNA testing in cases in which the petitioner was convicted after January 1, 2001. Since this amendment, the demand for case review has increased and the Innocence Project has just begun to review many of these post-2001 cases. In fact, the first couple of cases meeting the post-2001 criteria will soon be filed in court. The Innocence Project has 66 cases waiting to be assigned to a student intern, and 56 of those are convictions after January 1, 2001. The Innocence Project is investigating 73 cases, in addition to those awaiting assignment, and new requests for assistance come in every day. In our experience, locating the biological evidence, especially in older cases, can take considerable time and effort. The Project's current caseload cannot be screened and petitions filed by the impending sunset date; something that SB 361 will help alleviate.

DNA testing technology is rapidly evolving, thus, increasing obtainable DNA testing results in more cases. For example, Y-STR testing has provided DNA testing results where testing using traditional STR methods yielded no or inconclusive results. Other testing, such as "touch DNA" and "low copy DNA" also provide results on poor quality or small samples. These technologies provide results that previously were not obtainable. Because DNA testing technology continues to improve, the sunset provision should be extended on MCL 770.16.

MCL 770.16 should be amended to extend the sunset provision. Currently, only 8 other states (AR, CT, DE, GA, ID, LA, MN, and OH) have sunset provisions. Michigan's post conviction DNA testing law has not placed a burden on Michigan's court system. MCL 770.16 is a needed and effective tool for serving justice and the public interest. Extending the sunset provision will allow these interests to continue to be served. Thank you in advance for your support on SB 361.



FACT SHEET

- The **Cooley Innocence Project** started in May 2001.
- The State of Michigan enacted a DNA statute (MLC 770.16) in 2001 for wrongfully convicted incarcerated persons who are innocent of the charged offense and whose innocence can be established by DNA testing of the biological evidence collected at the time of offense.
- Operating under the DNA law, the Cooley Innocence Project's mission is to identify, provide legal assistance to, and secure the release of persons who are wrongfully imprisoned for crimes they did not commit, and to provide its students with an excellent learning experience.
- The Project accepts qualified students to work with faculty experienced in criminal and post-conviction law to review and evaluate post-conviction cases for strong evidence of factual innocence and prepare appropriate cases for court action.
- Cooley Law School students, under faculty supervision, review court files and case histories; investigate facts; interview involved persons; prepare case timelines and summaries; evaluate cases under the statutory criteria; and draft court pleadings.
- The Project has received, reviewed and evaluated over 4,000 requests for assistance.
- Two innocent men have been released due to the efforts of the Cooley Innocence Project. Kenneth Wyniemko walked out of prison a free man after Macomb County dismissed all charges against him on June 17, 2003. Wyniemko had been in prison since 1994, wrongfully convicted of rape. Nathaniel Hatchett was released on April 14, 2008. Mr. Hatchett served almost twelve years in prison for a rape he did not commit.
- The Cooley Innocence Project works tirelessly to locate DNA evidence in cases that meet the statutory criteria and is currently preparing several cases for litigation.
- The work of innocence projects nationally has been credited with the release of over 270 wrongfully convicted prisoners through the use of DNA testing.
- For more information about the Cooley Innocence Project, visit www.cooley.edu/clinics/innocence.htm For more information about wrongful convictions, visit www.innocenceproject.org